

Amendments to the Drawings:

The attached replacement drawings sheets include changes to FIG. 1B, FIGS. 2A-5B, and FIGS. 8A-8B, as suggested by the Examiner:

- In FIG. 1B, the reference number "234" has been changed to --324-- to reflect what is described in the specification, page 13, paragraph [0061].
- In FIGS. 2A-5B and FIGS. 8A-8B, the legend --Prior Art--, has been added.

Remarks/Arguments

Applicant respectfully traverses the objection to the specification regarding incorporation by reference of international publications as explained below.

By way of the present amendment, Applicant has modified the figures as suggested by the Examiner. In FIG. 1B, reference number "234" has been changed to --324-- to reflect what is described on page 13 paragraph [0061]. In FIGS. 2A-5B and FIGS. 8A-8B, the legend --Prior Art-- has been added as suggested by the Examiner. No new matter has been introduced by way of these amendments. Replacement drawing sheets are submitted herewith.

Applicant has also herein amended Claims 1, 4, 6, 8, 10 and 12; and canceled Claims 3, 9 and 14-20. Eleven (11) claims remain pending in the application: Claims 1, 2, 4-8 and 10-13, of which Claims 1 and 8 are independent. Applicant respectfully requests reconsideration of the pending claims, in view of the amendments above and comments below.

Objections to Specification

On page 3 of the Office Action, the Examiner objected to the specification by stating that "incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper." Further, the Examiner stated that "Applicant has attempted to improperly incorporate by reference the disclosures of foreign patents WO 00/56394 in lines 9-10 of paragraph [0007] and WO 00/56677 in lines 14-15 of the same paragraph." In view of the remarks below, such objection to the specification is respectfully traversed.

MPEP 608.01(p)(I)(A) states that:

"Essential material" is defined in 37 CFR 1.57(c) as that which is necessary to: (1) provide a written description of the claimed invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by the first

paragraph of 35 U.S.C. 112, (2) describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by the second paragraph of 35 U.S.C. 112, or (3) describe the structure, material, or acts that correspond to a claimed means or step for performing a specified function as required by the sixth paragraph of 35 U.S.C. 112. In any application that is to issue as a U.S. patent, essential material may only be incorporated by reference to a U.S. patent or patent application publication.

Other material ("nonessential subject matter") may be incorporated by reference to (1) patents or applications published by the United States or foreign countries or regional patent offices, (2) prior and concurrently filed, commonly owned U.S. applications, or (3) non-patent publications. Nonessential subject matter is subject matter referred to for purposes of indicating the background of the invention or illustrating the state of the art.

Given the current scope of the claims, the foreign published applications WO 00/56394 and WO 00/56677, both referenced in paragraph [0007] , are clearly directed to "nonessential material". If the Examiner believes that these references describe "essential material", needed to support the claims, then Applicant respectfully requests that the Examiner identify where in these foreign publications the essential material is found that is not found in the current specification. Since 37 C.F.R §1.57(d) permits incorporating by reference to foreign published applications, no amendment to the specification should be necessary, and the objection to the specification should be withdrawn.

Restriction Requirement

Applicant herein affirms the election of the invention set forth in Group I, Claims 1-13, drawn to an article, classified in class 428, subclass 582. Applicant reserves the right to pursue the subject matter of the invention set forth in Group II, claims 14-20, and similar claims, in continuing application(s). Claims 14-20 have been canceled.

Claim Rejections - 35 U.S.C. § 112

The Examiner rejected Claims 3-5 and 9-11 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner has indicated that in Claims 3 and 9, Applicant appears to be reciting a different metal member structure than the metal member structure recited in Independent Claims 1 and 8. For purposes of Examination, the Examiner has offered a suggested meaning for Claims 3 and 9. After canceling Claims 3 and 9, and incorporating their subject matter into Independent Claims 1 and 9 respectively, Applicant has adopted the suggested meaning offered by the Examiner. Both metal members have now been distinguished by labeling the first metal member and the second metal member appropriately, as shown in the Amendments and Listing of Claims, Claims 1 and 9. Thus, the rejection under 35 U.S.C. § 112, second paragraph, has now been overcome. Further, because amended Claim 4 is now dependent upon amended Claim 1, and since Claim 5 is dependent upon amended Claim 1, through intervening dependent Claim 4, the rejection of dependent Claims 4 and 5 under 35 U.S.C. § 112 has also been overcome. Also, because amended Claim 10 is now dependent upon amended Claim 8, and since Claim 11 is dependent upon amended Claim 1, through intervening dependent Claim 10, the rejection of dependent Claims 10 and 11 under 35 U.S.C. § 112 has also been overcome.

Double Patenting

The Examiner rejected Claim 1 under the "same invention" statutory type (35 U.S.C. § 101) double patenting as claiming the same invention as that of Claim 2 of copending Application Number 10/691,201 (US Patent Application Publication 2004/0088032). Applicant has amended Claim 1 by further limiting "the ceramic member" to be a "substantially close-ended ceramic can which further includes a second metal member which forms an end cap to the ceramic member, which end cap completely closes the end of the ceramic can." As now amended, Claim 1 is no longer coextensive in scope with Claim 2 of copending Application

Number 10/691,201, thus the “same invention” statutory type double patenting rejection should be overcome.

The Examiner also provisionally rejected Claims 2-4 and 8-10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 2 of copending Application Number 10/691,201 (US Patent Application Publication 2004/0088032). In the event the indicated claims of the referenced copending Application No. 10/691,201 should issue, applicant has submitted herewith a Terminal Disclaimer which should likewise overcome this provisional rejection.

Claim Rejections - 35 U.S.C. § 102(b)

The Examiner rejected Claims 1-2, 6-8 and 12-13 under 35 U.S.C. § 102(b) as being anticipated by Byers et al., U.S. Patent 4,991,582. After careful review of the '582 patent, Applicant has determined that Byers et al. do not teach an element found in amended independent Claims 1 and 8 relating to *“the ceramic member being substantially close-ended having an end cap which completely closes the end of the ceramic can.”* The added element to amended Claim 1 was adopted from canceled Claim 3 and the added element to amended Claim 8 was adopted from canceled Claim 9 as explained above.

Anticipation requires that each and every element set forth in the claim be found in a single prior art reference. MPEP §2131. Thus, amended independent Claims 1 and 8 contain an element which is not found or taught in Byers et al.

In view of the above-described amendments to independent Claims 1 and 8, the rejection of independent Claims 1 and 8 under 35 U.S.C. § 102(b) as being anticipated by Byers et al., U.S. Patent 4,991,582, should be overcome. Further, because Claim 2 and amended Claim 6 are dependent upon amended Claim 1, and since Claim 7 is dependent upon amended Claim 1, through intervening Claim 6, the rejection of dependent Claims 2, 6, and 7 under 35 U.S.C. § 102(b) as being anticipated by Byers et al. should also be overcome. Also, because amended Claim 12 is dependent upon amended Claim 8, and since Claim 13 is dependent upon amended Claim 8, through intervening Claim 12, the rejection of dependent Claims 12

and 13 under 35 U.S.C. § 102(b) as being anticipated by Byers et al. should have also been overcome.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejected Claims 3-4 and 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Byers et al., U.S. Patent 4,991,582 in view of by Schulman et al., U.S. Patent 6,208,894. Applicant respectfully traverses this rejection for the reasons set forth below.

First, it is noted that dependent Claims 3 and Claims 9 have been canceled to overcome other rejections as explained above and their subject matter has been incorporated into independent Claims 1 and 8 respectively.

Second, it is noted that amended independent Claims 1 and 8 each contain an element which is not found in Byers et al. Claim 1 requires that the ceramic member be substantially close-ended having an end cap which completely closes the end of the ceramic can. For the reasons already described above, Byers et al. do not teach, show, or suggest this feature. Rather, Byers et al. teach a ceramic sleeve **14** which is open-ended. This is not the construction nor method that is claimed by Applicant.

Thirdly, as the Examiner correctly noted, Byers does not include the ceramic member being substantially close-ended which has a metal end cap which completely closes the ceramic. Byers et al. do teach a ceramic sleeve **14** which is open-ended and Schulman et al. teaches an end cap electrode **112a** used to close the end of the ceramic tube. Thus, Byers et al. in view of Schulman et al., teach a contact brazing surface area between the ceramic tube and the end cap electrode **112a** that is limited to the thickness of the flange of the ceramic tube. See Byers et al., FIG. 9, and Schuman et al., FIG. 10A.

Applicant provides a significant improvement over the combined references, which improvement was not known to a person of ordinary skill in the art at the time of the invention, by providing a surface area that is greater than that shown in the combined references of Byers et al. and Schulman et al. The surface area in Applicant's present application creates a strong braze joint between the ceramic member **215** and the electrode end

cap **22**, as shown in FIGS. 9A and 9B. Also shown in FIG. 9C, and as described on page 21, paragraph [0083], Applicant provides a braze material **240** which spreads relatively evenly, after melting and cooling during the brazing process, along the entire surface area between the ceramic can **215** and the electrode **22**, thus forming a strong braze bond and providing a greater improvement over the combined references.

Hence, it is seen that: (1) Byers fails to teach or suggest an essential element (a ceramic member being substantially close-ended which has a metal end cap which completely closes the ceramic) of the claimed invention, so even if a person of skill in the art were prompted to combine the teachings of Byers with the teachings of Schulman such combination would not result in the claimed invention because it would still lack the bonding improvement between the ceramic can and the metal end cap; and (2) the teachings of Schulman result in a weaker bond between the ceramic can and the metal end cap, failing to improve the hermetic bond between a ceramic can and a metal end cap. Thus, it is respectfully submitted that a person of skill in the art would not be prompted to combine the teachings of Byers with the teachings of Schulman because to do so would result in a weaker bond. Hence, a *prima facie* case of obviousness has not been established, and this rejection should be removed.

Claims 4 and 10 are dependent upon independent Claims 1 and 8 respectively, and should be allowable for the same reasons that Claims 1 and 8 are allowable.

Conclusion

In view of the foregoing, it is respectfully submitted that the rejections have been overcome and that the pending claims are in condition for allowance. An indication of allowability of Claims 1, 2, 4-8, and 10-13 at an early date is thus earnestly solicited.

The Examiner is invited to telephone the undersigned, Victoria A. Poissant, should any issues remain after consideration and entry of this response, in order to permit early resolution of such issues.

Respectfully Submitted,

October 31, 2005


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Attachments:

- Copy of Replacement Drawing Sheets (6 pages)
- Replacement Drawing Sheets (6 pages)
- Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Referenced" Application
- Petition for a One Month Extension of Time Under 37 CFR 1.136(a), including authorization to charge a fee of \$120 to Deposit Account.

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